THE

ARGUMENTS

Of the Right Honourable, the late

Lord Chancellor *NOTTINGHAM*,

Upon which he made the

DECREE

IN THE

CAUSE

BETWEEN THE

Honourable *Charles Howard*, Esq; Plaintiff;
Henry late Duke of *Norfolk*, *Henry* Lord *Mowbrey* his Son, *Henry* Marquess of *Dorchester*, and *Richard Marriott*, Esq; Defendants:

WHEREIN

The several Wayes and Methods of limiting the Trust of a Term for Years, are fully debated.

LONDON,

Printed for *George Tatarshall*, Esq; of *Finchamsted* in the County of *Berks*. MDCLXXXV.

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Printed for George Tarvell, Esq; of Tarvell's-Inn, the Coun-
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The Arguments of the late Lord Chancellor Nottingham, *upon which he made the Decree in the Cauſe between the Honourable* Charles Howard, *Eſquire, Plaintiff*; Henry *late Duke of* Norfolk, Henry *Lord* Mowbrey, *his Son,* Henry *Marqueſs of* Dorcheſter, *and* Richard Marriot, *Eſquire, Defendants. Wherein the ſeveral wayes and methods of limiting the Truſt of a Term for Years, are fully debated.*

The Firſt Argument.

THis is the Caſe. The Plaintiff, by his Bill demands the benefit of a Term for two hundred Years, in the Barony of *Greyſtocke*, upon theſe ſettlements.

Henry Fredericke late Earl of *Arundel* and *Surry*, Father of the Plaintiff and Defendant,

dant, had Iſſue, *Thomas*, *Henry*, *Charles*, *Edward*, *Francis* and *Bernard*; and a Daughter, the Lady *Katharine*: *Thomas* Lord *Maltravers*, his eldeſt Son was *Non compos Mentis*, and care is taken to ſettle the Eſtate and Family, as well as the preſent circumſtances will admit. And thereupon there are two Indentures drawn, and they are both of the ſame date. The one is an Indenture between the Earl of *Arundel* of the one part; and the Duke of *Richmond*, the Marqueſs of *Dorcheſter*, *Edward* Lord *Howard* of *Eaſtcricke*, and Sir *Thomas Hatton*, of the other part: it bears date the Twenty firſt day of *March*, 1647. Whereby an Eſtate is conveyed to them and their Heirs; To theſe uſes; To the uſe of the Earl for his life.

After that, to the Counteſs his Wife for her life, with power to make a Leaſe for 21. Years, reſerving the antient Rents.

The remainder for 200. Years to thoſe Truſtees, and that upon ſuch truſts, as by another Indenture intended to bear date the ſame day the Earl ſhould limit and declare; and then the remainder of the Lands are to the uſe of *Henry*, and the Heirs Males of his Body begotten, with like remainders in Tail to *Charles*, *Edward*, and the other Brothers ſucceſſively.

Then comes the other Indenture, which was to declare the Truſt of the Term for 200 Years, for which all theſe preparations are made, and that declares that it was intended this Term ſhould attend the inheritance, and that the profits of the ſaid Barony, *&c.* ſhould be received by

by the ſaid *Henry Howard*, and the Heirs Males of his Body ſo long as *Thomas* and any Iſſue Male of his Body ſhould live, (which was conſequently only during his own life, becauſe he was never likely to marry) and if he dye without Iſſue in the life time of *Henry*, not leaving a Wife *privement Enſeint* of a Son, or if after his death, the Digniy of *Earl* of *Arundell* ſhould deſcend upon *Henry*; Then *Henry* or his Iſſue ſhould have no farther benefit or profit of the Term of 200 Years. Who then ſhall? But the benefit ſhall redound to the younger Brothers in manner following. How is that? To *Charles* and the Heirs Males of his Body, with the like Remainders in Taile to the reſt. Thus is the matter ſetled by theſe Indentures; how this Family was to be provided for, and the whole Eſtate govern'd for the time to come.

Theſe Indentures are both ſealed and delivered in the preſence of Sir *Orlando Bridgman*, Mr: *Edward Alehorne* and Mr. *John Alehorn*, both of them my Lord Keeper *Bridgman's* Clerks; I knew them to be ſo.

This Atteſtation of theſe Deeds is a Demonſtration to me they were drawn by Sir *Orlando Bridgman*.

After this the Contingency does happen: for *Thomas Duke* of *Norfolk* dies without Iſſue, and the Earldome of *Arundel* as well as the Dukedom of *Norfolk* deſcended to *Henry* now *Duke* of *Norfolk*, by *Thomas* his death without Iſſue: preſently upon this the Marqueſs of *Dorcheſter*, the ſurviving Truſtee of this Eſtate,

aſſigns his Eſtate to *Marryot*, but he doth it upon the ſame Truſts that he had it himſelf: Mr *Marryot* aſſigns his intereſt frankly to my Lord *Henry*, the now *Duke*, and ſo has done what he can to merge and extinguiſh the Term by the ſigning it to him, who has the Inheritance.

To excuſe the Marqueſs of *Dorcheſter* from cooperating in this matter, it is ſaid, there was an abſolute neceſſity ſo to do; Becauſe the Tenants in the *North* would not be brought to renew their Eſtates, while ſo Aged a perſon did continue in the Seigniory, for fear, if he ſhould dye quickly, they ſhould be compelled to pay a new Fine. But nothing in the World can excuſe *Marryot* from being guilty of a moſt wilful and palpable Breach of Truſt, if *Charles* have any Right to this Term: ſo that the whole contention in the Caſe is to make the Eſtate limited to *Charles*, void, void in the Original Creation, if not ſo, void by the common Recovery ſuffered by the now *Duke*, and the Aſſignment of *Marryot*. If the Eſtate be Originally void, which is limited to *Charles*, there is no harm done; but if it only be avoided by the Aſſignment of *Marryot*, with the concurrence of the *Duke* of *Norfolk*, he having notice of the Truſts, then moſt certainly they muſt make it good to *Charles* in Equity, for a palpable breach of Truſt of which they had notice. So that the queſtion is reduced to this main ſingle point, Whether all this care that was taken to ſettle this Eſtate and Family, be void and inſignificant; and all this proviſion made for *Charles* and the Younger Children to have no Effect.

I am

I am in a very great ſtrait in this Caſe: I am aſſiſted by as good advice, as I know how to repoſe my ſelf upon, and I have the faireſt opportunity, if I concur with them, and ſo ſhould miſtake, to excuſe my ſelf, that I did *errare cum patribus*; but I dare not at any time deliver any Opinion in this place, without I concurr with my ſelf and my Conſcience too.

I deſire to be heard in this Caſe with great benignity, and with great excuſe for what I ſay, for I take this queſtion to be of ſo *univerſal a Concernment* to all mens Rites and Properties, in point of diſpoſing of their Eſtates, as to moſt conveyances, made and ſetled in the late times and yet on foot, that being afraid I might ſhake more ſettlements than I am willing to do, I am not diſpoſed to keep ſo cloſely and ſtrictly to the Rules of Law as the Judges of the Common-Law do, as not to look to the Reaſons and Conſequences that may follow upon the determination of this Caſe.

I cannot ſay in this Caſe, that this Limitation is void, and becauſe this is a point, that in Courts of Equity (which are not favoured by the Judgments of the Courts of Law) is ſeldome debated with any great induſtry at the Barr; but where they are poſſeſſed once of the Cauſe, they preſs for a Decree, according to the uſual and known Rules of Law; and think we are not to examine things. And becauſe it is probable this Cauſe, be it adjuged one way or other, may come into the Parliament, I will take a little pains to open the Caſe, the Conſequences that depend upon it, and the Reaſons

ſons that lye upon me, as thus perſwaded, to ſuſpend my Opinion.

Whether this Limitation to *Charles* be void or no, is the Queſtion. Now, firſt, theſe things are plain and clear, and by taking notice of what is plain and clear, we ſhall come to ſee what is doubtful.

1. That the Term in Queſtion, tho' it were attendant upon the Inheritance, at firſt, yet upon the hapning of the Contingency, it is become a Term in groſs to *Charles*.

2. That the Truſt of a Term in groſs can be limited no otherwiſe in Equity, than the Eſtate of a Term in groſs can be limited in Law: for I am not ſetting up a Rule of Property in Chancery, other than that which is the Rule of Property at Law.

3. It is clear, That the legal Eſtate of a Term for Years, whether it be a long or a ſhort Term, cannot be limited to any man in Taile, with the remainder over to another after his death without Iſſue; That is flat and plain, for that is a direct perpetuity.

4. If a Term be limited to a Man and his Iſſue, and if that Iſſue dye without Iſſue, the remainder over, the Iſſue of that Iſſue takes no Eſtate; and yet becauſe the remainder over cannot take place, till the Iſſue of that Iſſue fail, that Remainder is void too, which was *Reeves* Caſe; and the reaſon is, becauſe that looks towards a perpetuity.

5. If

5. If a Term be limited to a Man for life, and after to his firſt, ſecond, third, &c. and other Sons in Tail ſucceſſively, and for default of ſuch Iſſue the remainder over, though the contingency never happen, yet that Remainder is void, though there were never a Son then born to him; for that looks like a perpetuity, and this was Sir *William Backhurſt* his Caſe in the 16. of this King. *Modern Reports*, 115.

6. Yet one ſtep further than this, and that is *Burgis*'s Caſe. A Term is limited to one for life, with contingent Remainders to his Sons in Tail, with remainder over to his Daughter, though he had no Son; yet becauſe it was foreign and diſtant to expect a Remainder after the Death of a Son to be born without Iſſue, that having a proſpect of a perpetuity, alſo was adjudged to be void. *Modern Reports*, 115.

Theſe things have been ſettled, and by theſe Rules has this Court alwayes governed it ſelf: But one ſtep more there is in this Caſe.

7. If a term be deviſed, or the Truſt of a Term limited to one for Life, with twenty Remainders for Life, ſucceſſively, and all the perſons in *eſſe*, and alive at the time of the Limitation of their Eſtates, theſe though they look like a poſſibility upon a poſſibility, are all good, becauſe they produce no inconvenience, they wear out in a little time with an eaſie interpretation, and ſo was *Alford*'s Caſe. I will yet go farther.

8. In the Caſe cited by Mr. *Holt*, *Cotton* and *Heath*'s *Roll. abr. tit. deviſe*, 612.

Heath's Caſe, a Term is deviſed to one for 18. Years, after to *C.* his eldeſt Son for Life, and then to the eldeſt Iſſue Male of *C.* for Life, though *C.* had not any Iſſue Male at the time of the Deviſe, or death of the Deviſor, but before the death of *C.* it was reſolved by Mr. Juſtice *Jones*, Mr. Juſtice *Crook*, and Mr. Juſtice *Berkley*, to whom it was referred by the Lord Keeper *Coventry*, that it only being a contingency upon a Life that would be ſpeedily worn out, it was very good; for that there may be a poſſibility upon a poſſibility, and that there may be a contingency upon a contingency, is neither unnatural nor abſurd in it ſelf; but the contrary Rule given as a Reaſon by my Lord *Popham* in the Rector of *Chedington's* Caſe, looks like a Reaſon of Art; but, in truth, has no kind of Reaſon in it, and I have known that Rule often denyed in *Weſtminſter-Hall*. In truth, every Executory Deviſe is ſo, and you will find that Rule not to be allowed in *Blanford* and *Blanford's* Caſe, 13. *Jac.* 1. part of my Lord *Rolls*, 318. where he ſayes, If that Rule take place, it will ſhake ſeveral common Aſſurances: And he cites *Paramour's* and *Yardley's* Caſe in the Commentaries where it was adjudged a good Deviſe, though it were a poſſibility upon a poſſibility.

Co. 3. 256.

Theſe Concluſions, which I have thus laid down, are but Preliminaries to the main Debate. It is now fit we ſhould come to ſpeak to the main Queſtion of the Caſe, as it ſtands upon its own Reaſon, diſtinguiſhed from the Reaſons of theſe Preliminarie; and ſo the Caſe is this.

The Truſt of a Term for Two Hundred Years

Years is limited to *Henry* in Tail, provided if *Thomas* dye without Iſſue in the life of *Henry*, ſo that the Earldome ſhall deſcend upon *Henry*, then to go to *Charles* in Tail; and whether this be a good Limitation to *Charles* in Tail, is the Queſtion; for moſt certainly it is a void Limitation to *Edward* in Tail, and a void Limitation to the other Brothers in Tail: But whether it be good to *Charles* is the doubt, who is the firſt taker of this Term in groſs; for ſo it is (I take it) now become, and I do under favour, differ from my Lord Chief Juſtice in that point; for, if *Charles* dye, it will not return to *Henry*; for that is my Lord *Cook*'s error in *Leonard Loveis*'s Caſe: for he ſayes, That if a Term be deviſed to one and the Heirs Male of his Body, it ſhall go to him or his Executors, no longer than he has Heirs Males of his Body; but it was reſolved otherwiſe in *Leventhorp*'s and *Aſhby*'s Caſe, 11. *Car*, *B. R.* Rolls Abridgment, Title Deviſe, fol. 611. for theſe Words are not the Limitation of the time, but an abſolute diſpoſition of the Term. *Co.* 10. 87.

But now let us, I ſay, conſider whether this Limitation be good to *Charles* or no. It hath been ſaid,

Obj. 1. It is not good by any means; for it is a poſſibility upon a poſſibility.

Anſw. That is a weak Reaſon, and there is nothing of Argument in it, for there never was yet any Deviſe of a Term with Remainder over, but did amount to a poſſibility upon a poſſibility, and executory Remainders will make it ſo.

Obj. 2. Another thing was ſaid, it is void, becauſe

cauſe it doth not determine the whole Eſtate, and ſo they compare it to Sir *Anthony Mildmay's* Caſe, where it is laid down as a Rule, that every Limitation or Condition ought to defeat the intire Eſtate, and not to defeat part, and leave part not defeated; and it cannot make an Eſtate to ceaſe as to one perſon, and not as to the other. But,

Anſw. I do not think, that any Caſe or Rule was ever worſe applyed than that to this; for if you do obſerve this Caſe, here is no *Proviſo* at all annexed to the legal Eſtate of the Term, but to the equitable Eſtate, that is built upon the legal Eſtate unto the Eſtate to *Henry*, and the Heirs Males of his Body, to attend the Inheritance with a *Proviſo*, If *Thomas* dye without Iſſue in *Henry's* life, and the Earldom come to *Henry*, then to *Charles*: which doth determine the Eſtate to *Henry* and his Iſſue; but the other Eſtate given to *Charles* doth ariſe upon this *Proviſo*, which makes it an abſurdity to ſay, that the ſame *Proviſo*, upon which the Eſtate ariſeth, ſhould determine that Eſtate too.

Obj. 3. The great matter objected is, It is againſt all the Rules of Law, and tends to a perpetuity.

Anſw. If it tends to a perpetuity, there needs no more to be ſaid, for the Law has ſo long laboured againſt perpetuities, that it is an undenyable Reaſon againſt any ſettlement, if it can be found to tend to a perpetuity.

Therefore let us examine whether it do ſo, and let us ſee what a Perpetuity is, and whether any Rule of Law is broken in this Caſe.

A perpetuity is the ſettlement of an Eſtate or an Intereſt in Tail, with ſuch Remainders Expectant upon it, as are in no ſort in the power of the Tenant in Tail in poſſeſſion, to dock by any Recovery or Aſſignment, but ſuch Remainders muſt continue as perpetual cloggs upon the Eſtate: ſuch do fight againſt God, for they pretend to ſuch a ſtability in human Affairs, as the nature of them admits not of, and they are againſt the Reaſon and the policy of the Law, and therefore not to be endured.

But on the other ſide, future Intereſts, ſpringing Truſts, or Truſts Executory, Remainders that are to emerge and ariſe upon Contingencies, are quite out of the Rules and Reaſons of Perpetuities, nay out of the reaſon upon which the Policy of the Law is founded in thoſe Caſes, eſpecially, if they be not of remote or long conſideration; but ſuch as by a natural and eaſy interpretation will ſpeedily wear out, and ſo things come to the right Chanel again.

Let us examine this Rule with reſpect to Freehold-Eſtates, and ſee whether there it will amount to the ſame Iſſue.

There is not in the Law a clearer Rule than this, that there can be no Remainders limited after a Fee ſimple, ſo is the expreſs Book: Caſe 19 *Hen.* 8. in my Lord *Dyer*; But yet the nature of things, and the neceſſity of commerce between Man and Man, have found a way to paſs by that Rule, and that is thus; either by way of Uſe, or by way of Deviſe: Therefore if a Deviſe be to a Man and his Heirs, and if he dye without Iſſue in the life of *B.* then to *B.* and his Heirs: this is a Fee ſimple upon a Fee ſimple, and yet it has been held to be Good.

My Lord Chief Baron did ſeem to think, that

this Reſolution did take its Original from *Pells* and *Brown's* Caſe; but it did not ſo, the Law was ſetled before; you may find it expreſly reſolved 19 *Eliz.* in a Caſe between *Hinde* and *Lyon*, 3. *Leonard.* Which, of the Books that have lately come out, is one of the beſt; and it was there adjudged to be ſo good a limitation, that the Heir who pleaded *riens per deſcent* was forced to pay the debt, and it had the concurrence of a judgement in 38 *Eliz.* grounded upon the Reaſon of *Wellock* and *Hammond's* Caſe cited in *Beraſton's* Caſe where it is ſaid, *Croke, Eliz.* 204. in a deviſe it may well be, that an Eſtate in Fee ſhall ceaſe in one, and be transferred to another: all this was before *Pells* and *Brown's* Caſe, which was in 18. *Jac.* It is true it was made a Queſtion afterwards in the Serjeants Caſe; but what then? We all know that to be no Rule to judge by; for what is uſed to exerciſe the Wits of the Serjeants, is not a governing Opinion to decide the Law. It was alſo adjudged in *Hil.* 1649. when my Lord *Rolls* was Chief Juſtice, and again in *Mich.* 1650. and after that indeed in 1651. it was reſolved otherwiſe in *Jay* and *Jay's* Caſe: but it has been often agreed that where it is within the compaſs of one Life, that the Contingency is to happen, there is no danger of a perpetuity. And I oppoſe it to that Rule which was taken by one of the Lords the Judges, That where no Remainders can be limited, no contingent Remainder can be limited, which I utterly deny, for there can be no Remainder limited after a Fee ſimple, yet there may a contingent Fee ſimple ariſe out of the firſt Fee, as hath been ſhewn.

Cro. Mich. 18 *Jac.* 590.

3 *Leonard.* 64.

Thus

Thus it is agreed to be by all ſides in the Caſe of an Inheritance; but now ſay they, a Leaſe for Years, which is a Chattel, will not bear a contingent Limitation in regard of the poverty and meanneſs of a Chattel Eſtate. Now as to this point, the difference between a Chattel and an Inheritance is a difference only in Words, but not in ſubſtance, nor in Reaſon, or the Nature of the thing: for the owner of a Leaſe has as abſolute a power over his Leaſe, as he that hath an Inheritance has over that. And therefore where no perpetuity is introduced, nor any inconveniency doth appear, there no Rule of Law is broken.

The Reaſons that do ſupport the ſpringing Truſt of a Term as well as the ſpringing uſe of an Inheritance, are theſe.

1. Becauſe it hath hapned ſometimes, and doth frequently, that men have no Eſtates at all, but what conſiſt in Leaſes for Years: Now it were not only very ſevere, but (under favour) very abſurd, to ſay that he who has no other Eſtate but what conſiſts in Leaſes for Years, ſhall be incapable to provide for the Contingencies of his own Family, tho' theſe are directly within his view and immediate proſpect. And yet if that be the Rule, ſo it muſt be; for I will put the Caſe; A man that hath no other Eſtate but Leaſes for Years, Chattels real, treats for the marriage of his Son, and thereupon it comes to this agreement: Theſe Leaſes ſhall be ſetled as a Joynture for the Wife, and proviſion for the children; ſayes he, I am content, but how ſhall it be done? Why thus; You ſhall aſſign all theſe terms to *John* a *Styles*, in Truſt for your ſelf and your Executors, if the marriage take no effect; But then, if it takes effect, to your Son

while

while he lives, to his Wife after while she lives, with Remainders over. I would have any one tell me whether this were a void limitation upon a Marriage settlement; or if it be, what a strange absurdity is it, that a man shall settle it if the marriage take no effect, and shall not settle it if the marriage happen. ?

2. Suppose the Estate had been limited to *Henry Howard* and the Heirs Males of his Body, till the death of *Thomas* without Issue, then to *Charles*, there it had been a void limitation to *Charles*: if then the addition of those words, *If Thomas dye without Issue in the life of Henry, &c.* have not mended the matter, then all that addition of Words goes for nothing, which it is unreasonable and absurd to think it should.

3. Another thing there is, which I take to be unanswerable, and I gather it from what fell from my Lord Chief Justice *Pemberton*; and when I can answer that Case, I shall be able to answer my self very much for that which I am doing. Suppose the Proviso had been thus penned, And if *Thomas* dye without Issue Male, living *Henry*, so that the Earldome of *Arundel* descend upon *Henry*, then the term of 200 Years limited to him and his Issue, shall utterly cease and determine, but then a new Term of 200 Years shall arise and be limited to the same Trustees, for the Benefit of *Charles* in Tail. This he thinks might have been well enough, and attained the end and intention of the Family, because then this would not be a Remainder in Tail upon a Tail, but a new Term created.

Pray let us so resolve Cases here, that they may stand with the reason of mankind, when they are debated abroad. Shall that be reason here that is

not

not reaſon in any part of the World beſides? I would fain know the difference, why I may not raiſe a new ſpringing Truſt upon the ſame Term, as well as a new ſpringing Term upon the ſame Truſt; that is ſuch a chicanery of Law as will be laught at all over the Chriſtian World.

4. Another Reaſon I go on is this; That the meanneſs of the conſideration of a Term for years, and of a Chattel Intereſt, is not to be regarded: for whereas this will be no reaſon any where elſe; ſo I ſhall ſhew you, that this Reaſon, as to the Remainder of a Chattel Intereſt, is a Reaſon that has been exploded out of *Weſtminſter-Hall*. There was a time indeed that this Reaſon did ſo far prevail, that all the Judges in the time of my Lord Chancellor *Rich*, did 6 *Edvardi* 6. deliver their Opinions, That if a Term for Years be deviſed to one, provided, that if the Deviſee dye, living *J. S.* then to go to *J. S.* that remainder to *J. S.* is abſolutely void, becauſe ſuch a Chattel Intereſt of a Term for Years is leſs than a Term for Life, and the Law will endure no limitation over. Now this being a Reaſon againſt Senſe and Nature, the World was not long governed by it, but in 10 *Eliz.* in *Dyer*, they began to hold the Remainder was good by Deviſe; and ſo 15 *Eliz.* ſeems too, and 19 *Eliz.* it was by the Judges held to be a good Remander; and that was the firſt time that an executory Remainder of a Term was held to be good. When the *Chancery* did begin to ſee that the Judges of the Law did govern themſelves by the reaſon of the thing, this Court followed their Opinion, the better to fix them in it, they allowed of Bills by the remainder Man, to compel the Deviſee of the particular Eſtate, to put in ſecurity that he in Remainder ſhould enjoy it according to the Limita-

Dyer, fol. 74.

Dyer, f. 277.

Dyer, f. 328.
Dyer, f. 358.

tion. And for a great while ſo the practice ſtood, as they thought it might well, becauſe of the Reſolution of the Judges, as we have ſhewn: but after this was ſeen to multiply the *Chancery* Suits, then they began to reſolve that there was no need of that way, but the executory Remainder Man ſhould enjoy it, and the Deviſee of the particular Eſtate ſhould have no power to bar it. Men began to preſume upon the Judges then, and thought if it were good as to Remainders after Eſtates for Lives, it would be good alſo as to Remainders upon Eſtates Tail: That the Judges would not endure, and that is ſo fixed a Reſolution, that no Court of Law or Equity ever attempted to break in the World. Now then come we to this Caſe, and if ſo be where it does not tend to a perpetuity, a Chattel Intereſt will bear a Remainder over, upon the ſame Reaſon it will bear a Remainder over upon a Contingency, where that Contingency doth wear out within the compaſs of a life, otherwiſe, it is only to ſay, it ſhall not, becauſe it ſhall not: For there is no more inconvenience in the one than in the other.

Come we then at laſt, to that which ſeems moſt to choak the Plaintiffs Title to this Term, and that is the reſolution in *Child* and *Baylie*'s Caſe: For it is upon that Judgment, it ſeems, all Conveyances muſt ſtand or be ſhaken, and our Decrees made. Now therefore I will take the liberty to ſee what that Caſe is, and how far the Opinion of it ought to prevail in our Caſe.

1. If *Child* and *Baylie*'s Caſe be no more than as it is reported by *Rolls*, part 2. fol. 129. then it is nothing to the purpoſe: A Deviſe of a Term to *Dorothy* for life, the remainder to *William*, and if he

he dyes without Iſſue, to *Thomas*, without ſaying, in the life of *Thomas*; and ſo it is within the common Rule of a Limitation of a Term in Tail, with Remainder over, which cannot be good.

But if it be as Juſtice *Jones* has reported it, *fol.* 15. then it is as far as it can go, an Authority: for it is there ſaid to be, living *Thomas*. But the Caſe, under favour, is not altogether as Mr. Juſtice *Jones* hath reported it neither; for I have ſeen a Copy of the Record upon this account; and, by the way, no Book of Law is ſo ill corrected, or ſo ill printed as that.

The true Caſe is, as it is reported by Mr. Juſtice *Crook*; and with Mr. Juſtice *Crooks* Report of it, doth my Lord *Rolls* agree, in his abridgment, Title Deviſe, 612. There it is, a Term of 76 Years is deviſed to *Dorothy* for Life, then to *William* and his Aſſigns all the reſt of the Term, provided if *William* dye without Iſſue then living, then to *Thomas*; and this is in effect our preſent Caſe; I agree it. But that which I have to ſay to this Caſe is, *Cro. Hil. 15 Jac. 459.*

Firſt, It muſt be obſerved, that the Reſolution there, did go upon ſeveral Reaſons, which are not to be found in this Caſe.

1. One Reaſon was touched upon by my Lord Chief Baron, That *William* having the Term, to him and his Aſſigns, there could be no Remainder over to *Thomas*, of which Words there is no notice taken by Mr. Juſtice *Jones*.

2. *Dorothy* the Deviſee for life, was Executrix, and did aſſent and grant the Leaſe to *William*, both which Reaſons my Lord *Rolls* doth lay hold upon, as material, to govern the Caſe.

3. *William* might have aſſigned his Intereſt, and then no Remainder could take place, for the Term was gone.

4. He

4. He might have had Iſſue, and that Iſſue might have aſſigned, and then it had put all out of doubt.

5. But the main Reaſon of all, which makes me oppoſe it, ariſeth out of the Record, and is not taken notice of in either of the Reports of *Rolls*, or *Jones*, or in *Rolls* Abridgment. The Record of that Caſe goes farther, for the Record ſayes; *There was a farther Limitation upon the death of* Thomas *without Iſſue to go to the Daughter, which was a plain affectation of a perpetuity to multiply Contingencies.* It farther appears by the Record, that the Fathers Will was made the 10 of *Eliz.* *Dorothy* the Deviſee for life, held it to the 24. and then ſhe granted and aſſigned the Term to *William*, he under that Grant held it till the 31 of *Eliz.* and then regranted it to his Mother, and dyed; the Mother held it till the 1 of K. *James*, and then ſhe dyed; the Aſſignees of the Mother held it till 14 *Jac.* and then and not till then did *Thomas*, the younger Son, ſet up a Title to that Eſtate; and before that time it appears by the Record, there had been ſix ſeveral Alienations of the Term to Purchaſers, for a valuable Conſideration, and the Term renewed for a valuable Fine paid to the Lord. And do we wonder now, that after ſo long an acquieſcence as from 10 *Eliz.* to 14 *Jacob.* and after ſuch ſucceſſive Aſſignments and Tranſactions, that the Judges began to lye hard upon *Thomas*, as to his Intereſt in Law, in the Term, eſpecially when the Reaſons given in the Reports of the Caſe, were legal Inducements to guide their Judgments, of which there are none in our Caſe? But then,

Secondly, At laſt, allowing this Caſe to be as full and direct an Authority as is poſſible, and as they would wiſh, that rely upon it; then I ſay —

1. The

1. The Reſolution in *Child* and *Balie*'s Caſe, is a Reſolution that never had any Reſolution like it before nor ſince.

2. It is a Reſolution contradicted by ſome Reſolutions, and to ſhew, that that Reſolution has been contradicted, there is -----

1. The Caſe of *Cotton* and *Heath*, which looks very like a contrary Reſolution, there is a Term limited to *A.* for eighteen years, the Remainder to *B.* for life, the Remainder to the firſt Iſſue of *B.* for life, this Contingent upon a Contingent was allowed to be good, becauſe it would wear out in a ſhort time. But

2. To come up more fully and cloſely to it, and to ſhew you, that I am bound up by the Reſolutions of this Court, there was a fuller and flatter Caſe 21 *Car.* 2. in *July* 1669, between *Wood* and *Saunders*. The Truſt of a long Leaſe is limited and declared thus: To the Father for ſixty years, if he lived ſo long; then to the Mother for ſixty years, if ſhe lived ſo long; then to *John* and his Executors if he ſurvived his Father and Mother; and if he died in their life-time, having Iſſue, then to his Iſſue; but if he dye without Iſſue, living the Father or Mother, then the Remainder to *Edward* in Tail. *John* did die without Iſſue, in the life-time of the Father and Mother, and the queſtion was, whether *Edward* ſhould take this Remainder after their death, and it was Reſolved by my Lord Keeper *Bridgeman*, being aſſiſted by Judge *Twiſden* and Judge *Rainsford*, that the Remainder to *Edward* was

good, for the whole Term had veſted in *John*, if he had ſurvived; Yet the Contingency never happning, and ſo wearing out in the compaſs of two Lives in being, the Remainder over to *Edward* might well be limited upon it.

Thus we ſee, that the ſame Opinion which Sir *Orlando Bridgeman* held when he was a Practizer, and drew theſe Conveyances upon which the queſtion now ariſeth, remained with him when he was the Judge in this Court, and kept the Seals; and by the way, I think it is due to the Memory of ſo great a Man, whenever we ſpeak of him, to mention him with great Reverence and Veneration for his Learning and Integrity.

Object. They will perhaps ſay, Where will you ſtop, if not at *Child* and *Balie*'s Caſe?

Anſ. Where? why every where, where there is any Inconvenience, any danger of a perpetuity; and where-ever you ſtop at the limitation of a Fee upon a Fee, there we will ſtop in the limitation of a Term of years. No man ever yet ſaid, a Deviſe to a man and his Heirs, and if he die without Iſſue, living *B.* then to *B.* is a naughty Remainder, that is *Pells* and *Browns* Caſe.

Now the *Ultimum quod ſit*, or the utmoſt limitation of a Fee upon a Fee, is not yet plainly determined, but it will be ſoon found out, if men ſhall ſet their Wits on work to contrive by Contingencies, to do that which the Law has ſo long laboured againſt, the thing will make it ſelf Evident, where it is Inconvenient, and God forbid, but that Miſchief ſhould be obviated and prevented.

I have done with the legal Reaſons of the Caſe : it is fit for us here a little to obſerve the Equitable Reaſons of it; and I think this Deed is good both in Law and Equity ; And the Equity in this Caſe is much ſtronger, and ought to ſway a man very much to incline to the making good this Settlement if he can. For,

1. It was prudence in the Earl to take care, that when the Honour deſcended upon *Henry*, a little better ſupport ſhould be given to *Charles*, who was the next Man, and trode upon the heels of the Inheritance.

2. Though it was always uncertain whether *Thomas* would die without Iſſue living *Henry*, yet it was morally certain that he would die without Iſſue, and ſo the Eſtate and Honour come to the younger Son: for it was with a careful circumſpection always provided, that he ſhould not Marry till he ſhould recover himſelf into ſuch eſtate of body and mind, as might ſuit with the honour and dignity of the Family.

3. It is a very hard thing for a Son to tell his Father, that the proviſion he has made for his younger Brothers is void in Law, but it is much harder for him to tell him ſo in Chancery. And if ſuch a proviſion be void, it had need be void with a vengeance ; it had need be ſo clearly void that it ought to be a prodigie if it be not ſubmitted to.

Now where there is no perpetuity introduced, no cloud hanging over the Eſtate but during a Life, which

which is a common poſſibility where there is no inconvenience in the Earth, and where the Authorities of this Court concur to make it good; to ſay all is void, and to ſay it here, I declare it, I know not how to do it. To run ſo Counter to the judgment of that great man, my Lord Keeper *Bridgeman*, who both adviſed this ſettlement, and when he was upon his Oath in this place Decreed it good. I confeſs his Authority is too hard for me to reſiſt, though I am aſſiſted by ſuch learned and able Judges, and will pay as great a Deference to their Opinions as any man in the World ſhall.

If then this ſhall not be void, there is no need for the Merger by the Aſſignment or the Recovery to be conſidered in the Caſe: For if ſo be this be a good limitation of the Truſt, and they who had notice of it, will palpably break it, they are bound by the Rules of Equity to make it good by making ſome Reparation. Nay, which is more, if the Heir enter upon the Eſtate to defeat the Truſt, that very Eſtate doth remain in Equity infected with the Truſt; which was the Caſe of my Lord of *Thomond*; ſo alſo was the Reſolution in *Jackſon* and *Jackſon's* Caſe: So that to me the Right appears clear, and the Remedy ſeems not to be difficult. Therefore my preſent thoughts are, that the Truſt of this Term was well limited to *Charles*, who ought to have the Truſt of the whole Term Decreed to him, and an account of the mean profits, for the time by paſt, and a recompence made to him from the Duke and Maryot for the time to come. But I do not pay ſo little Reverence to the Company I am in, as to run down their ſolemn Arguments and

and Opinions upon my preſent Sentiments; and therefore I do ſuſpend the Inrolment of any Decree in this Caſe, as yet: but I will give my ſelf ſome time to conſider, before I take any final Reſolution, ſeeing the Lords the Judges do differ from me in their Opinions.

The End of the Firſt Argument.

THE SECOND
ARGUMENT.

I Am not ſorry for the Liberty that was taken at the Bar to argue this over again, becauſe I deſired it ſhould be ſo; for in truth I am not in love with my own Opinion, and I have not taken all this time to conſider of it, but with very great willingneſs to change it if it were poſſible. I have as fair and as juſtifiable an opportunity to follow my own Inclinations (if it be lawful for a Judge to ſay he has any) as I could deſire; for I cannot concur with the three Chief Judges, and make a Decree that would be unexceptionable: But it is my Decree, I muſt be ſaved by my own Faith, and muſt not Decree againſt my own Conſcience and Reaſon.

It will be good for the ſatisfaction of the publick in this Caſe, to take notice how far the Court is agreed in this Caſe, and then ſee where they differ, and upon what grounds they differ; and whether any thing that hath been ſaid be a ground for the changing this Opinion. The Court agreed thus far:

That in this Caſe it is all one, the Limitation of the Truſt of a Term, or the Limitation of the Eſtate of a Term, all depends upon one and the ſame Reaſon. The Court is likewiſe agreed (which I ſhould have ſaid firſt, to diſpatch it out of

of the Caſe, that it may not trouble the Caſe at all) that the Surrender of Maryot to the Duke of *Norfolk*, and the common Recovery ſuffered by the Duke, are of no uſe at all in this Caſe: For if this Limitation to *Charles* be good, then is that Surrender and the Recovery a breach of Truſt, and ought to be ſet aſide in Equity, ſo all the Judges that aſſiſted at the hearing of this Cauſe agreed; If the Limitation be not good, then there was no need at all of a Surrender to bar it, nor of the common Recovery to extinguiſh it.

But then we come to conſider the Limitation, and there it is agreed all along in point of Law, That the meaſures of the Limitations of the Truſt of a Term, and the meaſures of the Limitations of the Eſtate of a Term, are all one, and uniform here, and in other Caſes, and there is no difference at Chancery or at Common Law, between the Rules of the one and the Rules of the other; what is good in one Caſe, is good in the other. And therefore in this Caſe the Court is agreed too, that the Limitations made in this Settlement to *Edward*, &c. are all void, for they tend directly and plainly to perpetuities, for they are Limitations of Remainders of a Term in groſs after an Eſtate-Tail in that Term, which commenceth to be a Term in groſs, when the Contingency for *Charles* happens.

Thus far there is no difference of Opinion: but whether the Limitation to *Charles*, if *Thomas* die without Iſſue, living *Henry*, whereby the Honour of the Earldom of *Arundel* deſcends upon *Henry*; I ſay, whether that be void too, is the great Queſtion of this Caſe wherein we differ in our Opinions.

It is ſaid that is void too ; and yet (ſever it from the Authority of *Child* and *Balie*'s Caſe, which I will ſpeak to by and by) I would be glad to ſee ſome tolerable Reaſon given why it ſhould be ſo ; for I agree it is a Queſtion in Law here upon a Truſt, as it would be elſewhere upon an Eſtate ; And ſo the Queſtions here, are both Queſtions of Law and Equity. It was well ſaid, and well allowed by all the Judges, when they did allow the Remainders of Terms after Eſtates Tail in thoſe Terms to be void. I ſhall not deviſe a Term to a man in Tail with Remainders over ; the Judges have admirably well reſolved in it, and the Law is ſetled (and *Matthew Mannings* Caſe did not ſtretch ſo far) becauſe this would tend to a perpetuity.

Now on the other ſide, I would fain know, when there is a Caſe before the Court, where the Limitation doth not tend to a perpetuity, nor introduceth any viſible inconvenience, what ſhould hinder that from being good : For though if there be a tendency to a perpetuity, or a viſible inconvenience, that ſhall be void for that reaſon ; yet the bare Limitation of the Remainder after an Eſtate-Tail, which doth not tend to a perpetuity, that is not void. Why ? becauſe it is not ? I dare not ſay ſo ; ſee then the Reaſons why it is ſo. The Reaſons that I lie under the load of, and cannot ſhake off, are theſe.

The Law doth in many Caſes allow of a future Contingent Eſtate to be limited, where it will not allow a preſent Remainder to be limited ; and that Rule, well underſtood, goeth through the whole

whole Caſe. How do you make that out? Thus: If a man have an Eſtate limited to him, his Heirs and Aſſigns for ever, (which is a Fee-ſimple) but if he die without Iſſue living *J. S.* or in ſuch a ſhort time then to *J. D.* though it be impoſſible to limit a Remainder of a Fee upon a Fee, yet it is not impoſſible to limit a Contingent Fee upon a Fee. And they that ſpeak againſt this Rule, do endeavour as much as they can to ſet aſide the Reſolution of *Pells* and *Browns* Caſe, which (under favour) was not the firſt Caſe that was ſo Reſolved; for as I ſaid before, when I firſt delivered my Opinion, it was reſolved to be a good Limitation 19 *Eliz.* in the Caſe of *Hinde* and *Lyon*, 3 *Leonard* 64. which by the way is the beſt Book of Reports of the later ones that hath come out without Authority. If that be ſo, then where a preſent Remainder will not be allowed, a Contingent one will. If a Leaſe for years come to be limited in Tail, the Law allows not a preſent Remainder to be limited thereupon, yet it will allow a future Eſtate ariſing upon a Contingency onely, and that to wear out in a ſhort time.

But what time? and where are the bounds of that Contingency? You may limit, it ſeems, upon a Contingency to happen in a life: what if it be limited, if ſuch a one die without Iſſue within twenty one years, or a hundred years, or while *Weſtminſter*-Hall ſtands? Where will you ſtop if you do not ſtop here? I will tell you where I will ſtop: I will ſtop where-ever any viſible inconvenience doth appear; for the juſt bounds of a Fee-ſimple upon a Fee ſimple are not yet determined, but the firſt inconvenience that ariſeth upon it will regulate that.

First of all then, I would fain have any one anſwer me, where there is no inconvenience in this Settlement, no Tendency to a perpetuity in this Limitation, and no Rule of Law broken by the Conveyance, what ſhould make this void? And no man can ſay that it doth break any Rule of Law, unleſs there be a Tendency to a perpetuity, or a palpable inconvenience. Oh, yes, Terms are meer Chattels, and are not in conſideration of Law ſo great as Freeholds, or Inheritances. Theſe are words, and but words, there is not any real difference at all, but the Reaſon of Mankind will laugh at it: ſhall not a man have as much power over his Leaſe, as he has over his Inheritance? If he have not, he ſhall be diſabled to provide for the Contingencies of his own Family that are within his view and proſpect, becauſe it is but a Leaſe for years, and not an Inheritance or a Freehold. There is that abſurdity in it which is to me inſuperable, nor is the Caſe that was put, anſwered in any degree. A man that hath no Eſtate but what conſiſts in a Leaſe for years, being to marry his Son, ſetled this Leaſe thus: In Truſt for himſelf in Tail, till the marriage take effect; and if the marriage take effect while he lives, then in Truſt for the married couple; is this future limitation to the married couple good or bad? If any man ſay it is void, he overthrows I know not how many Marriage-ſettlements: If he ſay it be good, why is not a future Eſtate in this Caſe as good as in that, when there is no tendency to a perpetuity, no viſible inconvenience?

All men are agreed, (and my Lord Chief Juſtice told us particularly how) that there is a way

in

in which it might be done, onely they do not like this way; and I desire no better argument in the world to maintain my Opinion, than that; For, says my Lord Chief Justice, suppose it had not been said thus, if *Thomas* die without Issue, living *Henry*, then over to *Charles*; but thus, if it happens that *Thomas* die without Issue in the life of *Henry*, &c. then this Term shall cease, and there shall a new Term arise and be created to vest in *Charles* in Tail, and that had been wonderful well, and my Lord of *Arundels* intention might have taken effect for the younger Son. This is such a subtilty as would pose the Reason of all Mankind: For I would have any man living open my understanding so far, as to give me a tolerable Reason why there may not be as well a new springing Trust upon the same Term to go to *Charles*, upon that Contingency, as a new springing Lease upon the same Trust: For the latter doth much more tend to a perpetuity than the former doth, I am bold to say it.

But I expect to hear it said from the Bar, and it has been said often, the Case of *Child* and *Balie* is a great Authority, so it is. But this I have to say to it, first, the point resolved in *Child* and *Balie*'s Case was never so resolved before, nor ever was there such a Resolution since. *Pells* and *Brownes* Case was otherwise resolved, and has often been adjudged so since. In the next place, I will not take much pains to distinguish *Child* and *Balie*'s Case from this, though the word (Assigns) and the grant of the Remainder by the Mother, who was Executrix, are things that *Rolls* lay hold on as Reasons for the Judgment. But I know not why I may not with Reverence to the Authority of that

that Case, and the Learning of those that Adjudged it, take the same liberty as the Judges in *Westminster*-Hall sometimes do, to deny a Case that stands single and alone of it self. And I am of Opinion the Resolution in that Case is not Law, though there it came to be resolved upon very strange circumstances to support such a Resolution; for the Remainder of a Term of seventy six years is called in question when but fifteen years of it remained, and after the possession had shifted hands several times, and therefore I do not wonder that the Considerations of Equity swayed that Case.

But I put it upon this point, pray consider, there is nothing in *Child* and *Balie's* Case that doth tend to a perpetuity, nor any thing in the Settlement of the Estate there, that could be called an Inconvenience, nor any Rule of Law broken by the Conveyance; but it is absolutely a Resolution *quia volumus*. For it disagrees with all the other Cases before and since, all which have been otherwise resolved; but it is a Resolution, I say, meerly because it is a Resolution. And it is expresly contrary to *Wood* and *Saunder's* Case, which no Art or Reason can distinguish from our Case or that. For here was that Case which was clipt and minced at the Bar, but never answered. *Wood* and *Saunder's* Case is this: To the Husband for sixty years, if he lived so long; to the Wife for sixty years, if she lived so long; then if *John* be living at the time of the death of the Father and Mother, then to *John*; but if he die without Issue, living Father or Mother, then to *Edward*. Suppose these words (living Father or Mother) had been out of the Case, and it had been

been to *John*, and if he die without Iſſue, to *Edward*, will any man doubt, but then the Remainder over had been void, becauſe it is a Limitation after an expreſs Entail? How came it then to be adjudged good! becauſe it was a Remainder upon a Contingency, that was to happen during two lives, which was but a ſhort Contingency, and the Law might very well expect the hapning of it? Now that is this Caſe, nay ours is much ſtronger; for here it is onely during one life, there were two.

The Caſe of *Cotton* and *Heath* in *Rolls* comes up to this: A Term is deviſed to *A.* for eighteen years; the Remainder to *B.* for life, the Remainder of the firſt Iſſue male of *B.* which is a Contingent Eſtate after a Contingency, and yet adjudged good, becauſe the happening of the Contingency was to be expected in ſo ſhort a time. Now that Caſe was adjudged by my Lord Keeper *Coventry*, Mr. Juſtice *Jones*, Mr. Juſtice *Crooke*, and Mr. Juſtice *Berkley*, as *Wood* and *Saunders* Caſe was by my Lord Keeper *Bridgeman*, Mr. Juſtice *Twiſden*, and Mr. Juſtice *Rainsford*; ſo that however I may ſeem to be ſingle in my Opinion, having the misfortune to differ from the three Learned Judges who aſſiſted me, yet I take my ſelf to be ſupported by ſeven Opinions in theſe two Caſes I have cited. Roll. abr. tit. Deviſe 612.

If then this be ſo, that here is a Conveyance made which breaks no Rules of Law, introduceth no viſible Inconvenience, favours not of a Perpetuity, tends to no ill Example, why this ſhould be void onely becauſe it is a Leaſe for years, there is no ſence in that.

Now if *Charles Howards* Eſtate be good in Law, it is ten times better in Equity. For it is worth the conſidering, that this Limitation upon this Contingency hapning, (as it hath, God be thanked) was the conſiderate Deſire of the Family, the Circumſtances whereof required Conſideration, and this Settlement was the reſult of it, made with the beſt Advice they could procure, and is as prudent a proviſion as could be made. For the Son now to tell his Father that the proviſion that he had made for his younger Brother is void, is hard in any Caſe at Law; but it is much harder in Chancery, for there no Conveyance is ever to be ſet aſide, where it can be ſupported by a reaſonable Conſtruction, and here muſt be an unreaſonable one to overthrow it.

I take it then to be good both in Law and Equity; and if I could alter my Opinion, I would not be aſhamed to retract it; for I am as other men are, and have my partialities as other men have. When all this is done, I am at the Bar deſired to conſider further of this Caſe: I would do ſo, if I could juſtifie it; but Expedition is as much the right of the Subject, as Juſtice is, and I am bound by *Magna Charta*, *Nulli negari*, *nulli differre Juſtitiam*. I have taken as much pains and time as I could to be informed; I cannot help it if wiſer men than I be of another Opinion; but every man muſt be ſaved by his own Faith, and I muſt diſcharge my own Conſcience.

I have made ſeveral Decrees ſince I have had the Honour to ſit in this place, which have been reverſed in another place, and yet I was not aſhamed

med to make them, nor ſorry when they were reverſed by others. And I aſſure you, I ſhall not be ſorry if this Decree which I do make in this Caſe, be reverſed too: yet I am obliged to pronounce it, by my Oath and by my Conſcience. For I cannot adjourn a Caſe for difficulty out of an Engliſh Court of Equity into the Parliament; there never was an Ajournment *Propter Difficultatem*, but out of a Court of Law where the proceedings are in Latin. The proceedings here upon Record are in Engliſh, and can no way now come into Parliament, but by way of appeal, to redreſs the Error in the Decree. I know I am very likely to erre, for I pretend not to be Infallible; but that is a thing I cannot help. Upon the whole matter, I am under a Conſtraint, and under an Obligation which I cannot reſiſt. A man behaves himſelf very ill in ſuch a place as this, that he needs to make Apologies for what he does, I will not do it. I muſt Decree for the Plaintiff in this Caſe, and my Decree is this:

That the Plaintiff ſhall enjoy this Barony for the reſidue of the Term of two hundred years, the Defendant ſhall make him a Conveyance accordingly, becauſe he extinguiſhed the Truſt in the other and the Term contrary to both Law and Reaſon, by the Merger and Surrender and common Recovery. And that the Defendants do account with the Plaintiff for the profits of the premiſſes by them or any of them received ſince the Death of the ſaid Duke *Thomas*, and which they or any of them might have received without wilful default; and that it be referred to Sir *Lacon William Child*, Kt. one of the Maſters of this Court, to take the ſaid Accompt, and to make unto

to the Defendants all just allowances; and what the said Master shall certifie due, the said Defendants are to pay unto the Plaintiffs, according to the Masters Report herein to be made. And that the Defendants shall forthwith deliver the possession of the Premisses to the Plaintiff, and that the Plaintiff shall hold and enjoy the said Barony of *Greystock*, with the Lands and Tenements thereto belonging; for the residue of the said Term of two hundred years, against the Defendants, and all claiming by, from, or under them. And it is further Ordered and Decreed, that the said Defendants do Seal and Execute such a Conveyance of the said Term to the Plaintiff as the Master shall approve of, in case the parties cannot agree the same; but the Defendants are not to pay any costs of the Suit.

FINIS.

The Reader is desired to Correct these errors of the Press:

PAge 3. line 8. read Dignity. p. 8. l. 33. read preliminaries. p. 10. l. 8. in marg. read Ca. 6. 40. p. 19. l. ult. after *Ketesford*, read and Judge *Wild*. p. 24. l. 10. read I can.

Ex. Gm B.
10/10/03